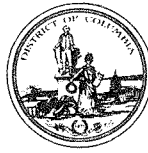


GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**Application No. 16327 of 1401 Sixteenth Street Associates** on behalf of the **Embassy of the Republic of Kazakhstan**, pursuant to 11 DCMR 1001, for permission under Section 1002 to locate a chancery with accessory parking in a DCOD/SP-1 and DCOD/R-5-B District at premises 1401-07 16<sup>th</sup> Street, N.W. (Square 195, Lots 824 and 847).

**HEARING DATE: March 18, 1998**

**DECISION DATE: April 1, 1998**

**ORDER**

**INTRODUCTION**

This application was filed by 1401 Sixteenth Street Associates on behalf of the Embassy of the Republic of Kazakhstan pursuant to Section 206 of the Foreign Missions Act (Title 11, Public Law 97-241, 92 Stat. 286, August 24, 1982) to locate its chancery accessory parking in the R-5-B portion of the property at 1401 16<sup>th</sup> Street, N.W. The Zoning Administrator has confirmed that chancery use of the SP-1 zoned portion of the property is permitted as a matter-of-right. The application was considered by the Board in accordance with the requirements of Chapter 10 of the Zoning Regulations. Chapter 10 was adopted by the Zoning Commission to implement Section 206 of the Foreign Missions Act. The public hearing was conducted as a rulemaking proceeding under Chapter 33 of the Supplemental Rules of Practice and Procedure before the Foreign Missions Board of Zoning Adjustment.

**APPLICATION**

The subject site is generally rectangular in shape, and is located at the northeast corner of 16<sup>th</sup> and O Streets, N.W., one block north of Scott Circle. The site measures 13,825 square feet in land area, and is occupied by a 3-story plus basement red brick office building that was constructed in 1888. The building has been occupied by SP office uses as a matter-of-right since 1974, pursuant to Section 4101.35 of the Zoning Regulations in effect at that time. Prior to that time, beginning in the late 1950's, the building was occupied as a matter-of-right by dental offices and a clinic on the basement and first floors, with an apartment house on the second and third floors.

The site is comprised of Lots 824 and 847. Lot 824 is entirely located in the SP-1 zone, and is paved and used for accessory parking for the office building. Lot 847 is split-zoned, with SP-1 zoning to a depth of approximately 90 feet east of 16<sup>th</sup> Street. The building and a portion of the parking area are located on the SP-1 part of the lot. The remainder of the accessory parking

area, measuring approximately 4,125 square feet and consisting of former lots 81 and 82, is located in the R-5-B zone. The R-5-B portion of the property is paved and used for accessory parking, and has been so used since at least the late 1950's. The entire property is located within the Dupont Circle Overlay District and the 16<sup>th</sup> Street Historic District.

The building contains approximately 21,252 square feet of gross floor area, and has been occupied since 1974 by law office and other professional and nonprofit office uses. Office use of the building for a chancery, labor union, nonprofit organization or professional office use was permitted as a matter-of-right at that time. However, special exception relief was required at that time to locate a portion of the accessory parking spaces in the R-5-B zone, pursuant to former Section 3104.44. Such approval was granted on December 9, 1974 in Order No. 11742. That Order expired by its terms on December 9, 1976. After diligent search, the applicant has been unable to locate any records of subsequent Board actions regarding the accessory parking. However, certificates of occupancy for SP office use of the building were issued after that date, and the entire lot has been used for accessory parking up to the present.

The SP-1 zone along 16<sup>th</sup> Street contains a mix of residential and office uses. The square to the south of the subject site contains chancery, apartment and hotel uses along 16<sup>th</sup> Street. Immediately to the south across O Street from the subject site is the chancery of the Nigerian Embassy. Directly to the north of the subject site, along 16<sup>th</sup> Street is the Carnegie Institution of Washington. Directly across 16<sup>th</sup> Street to the west is the multi-phase PUD known as the Resources Conservation Center, which was built as the headquarters building for the National Wildlife Federation and Resources for the Future. Portions of that building are leased to a variety of SP office uses. Also in that square, at the corner of 16<sup>th</sup> and P Streets, is the eight-story Embassy Office Building, which is also occupied by a variety of SP office uses. Diagonally across 16<sup>th</sup> Street to the southwest of the site are the First Baptist Church of Washington and the chancery of the Embassy of Australia. Directly to the east of the subject site, along O Street, are several row dwellings and apartment houses.

The Embassy's offices are presently located in leased space at 3421 Massachusetts Avenue, N.W. The Embassy is the contract purchaser of the subject property, and intends to use it for chancery purposes. The accessory parking area on the site has spaces for up to 32 vehicles. The Embassy is also the contract purchaser of the adjacent row dwelling at 1529 O Street, N.W., immediately east of the subject accessory parking area, and will use that building for matter-of-right residential purposes for Embassy staff.

The building is appropriate for the proposed chancery use, having been occupied for the last 24 years for SP office purposes as a matter-of-right. According to information supplied by the building owner, there were previously as many as 77 people working in the building at one time. By comparison, the use by the Embassy of the Republic of Kazakhstan will be low in intensity. Currently, the Embassy has 15 diplomats and 10 diplomatic staff. That number is not expected to increase in the foreseeable future.

The typical hours of operation of the Embassy are 9:00 a.m. to 5:30 p.m., Monday through Friday. On average, there are approximately five to eight visitors per day for diplomatic

or other business purposes. The Consular Office, which is open from 9:00 to 12:00, receives five to eight visitors per day, most all of whom are messengers arriving by bicycle. These numbers are not expected to increase at the new site. Most business with the public is conducted by telephone, telecopy, mail, express mail, messenger and diplomatic pouch. Most visitors to the Embassy (other than messengers) now arrive by taxi or other public transportation, and this is expected to continue at the new site. Both the present and proposed locations are adjacent to major thoroughfares with ready access to taxis and buses.

On a daily basis, 15 diplomatic vehicles will be driven to the site. The accessory parking area, with parking for up to 32 cars, is sufficient to accommodate any additional parking demands which may become necessary in the future. The majority of the staff at the Embassy currently walk to work from apartments in the vicinity. When the chancery moves to the new location, the Embassy will likely relocate staff members to apartments in the vicinity of the new site. Even if such relocations do not occur, the new site is located one block off Massachusetts Avenue, with Metro bus service from the current chancery site to Dupont Circle, a short distance from the new chancery site.

There are no regularly scheduled deliveries to the chancery by outside vendors. The administrative section purchases supplies as needed and brings them to the chancery. Trash will continue to be stored in containers behind the building as at present, and the chancery will contract with a private company for removal.

The Embassy of the Republic of Kazakhstan is entitled to use the 16<sup>th</sup> Street building for chancery office purposes as a matter-of-right, pursuant to 22 U.S.C. Section 4306(b)(3). This is because the existing SP office use of the building was established at a time when those office uses were permitted as a matter-of-right in the SP zone. The Zoning Regulations requiring special exception approval for SP office uses did not take effect until Zoning Commission Order No. 235 became final on September 22, 1978. As a result, other SP office uses may be substituted for the original office uses of the building as a matter-of-right.

The Zoning Administrator has confirmed that pursuant to Section 4306(b)(3) of the Foreign Missions Act, in the SP zones, "the limitations and conditions applicable to chanceries shall not exceed those applicable to other office or institutional uses in that area." Because another SP office use could move into the building as a matter-of-right, a chancery can likewise occupy the premises as a matter-of-right.

Notwithstanding the above, the Zoning Administrator has also confirmed that Foreign Missions Board of Zoning Adjustment ("FMBZA" or "Board") review is necessary in this instance because a portion of the area to be used for accessory parking on Lot 847 is located in the R-5-B zone. The only record of Board approval for that use expired in 1976. For a non-chancery office user, such use would be permitted by special exception approval under 11 DCMR Section 214. Pursuant to Section 206(c)(3) of the Foreign Missions Act, zoning review is required by the FMBZA in this instance. Therefore, the continued use of the R-5-B portion of the accessory parking is a permitted use subject to FMBZA disapproval after review based upon

the six criteria enumerated in Section 206(d) of the Foreign Missions Act and Section 1001 of the Zoning Regulations.

### **FOREIGN MISSIONS ACT CRITERIA**

A chancery with an accessory parking area shall be a permitted use in the Mixed Use Diplomatic District subject to disapproval by the Board based on the criteria of Section 206(d) of the Foreign Missions Act and 1001, et seq., of Chapter 10 of the Zoning Regulations. In considering the subject application, the Board must apply the specific criteria set forth in the aforementioned regulations. For purposes of this order, the provisions from the Zoning Regulations will be cited. These provisions are as follows:

1. Section 1001.2. The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital.
2. Section 1001.3 and 1001.4. Historic preservation, as determined by the Board in carrying out this Section; and in order to ensure compatibility with historic landmarks and historic districts, substantial compliance with District and federal regulations governing historic preservation shall be required with respect to new construction and to demolition of or alteration to historic landmarks.
3. Section 1001.5. The adequacy of off-street or other parking, and the extent to which the area will be served by public transportation to reduce parking requirements, subject to any special security requirements that may be determined by the Secretary of State, after consultation with federal agencies authorized to perform protective services.
4. Section 1001.6. The extent to which the area is capable of being adequately protected, as determined by the Secretary of State after consultation with federal agencies authorized to perform protective services.
5. Section 1001.7. The municipal interest, as determined by the Mayor.
6. Section 1001.8. The federal interest, as determined by the Secretary of State.

### **EVALUATION**

With respect to the above-referenced six criteria set forth in the Zoning Regulations, the Board states as follows:

1. **The International Obligation of the United States.** By letter dated March 3, 1998, the Deputy Director of the Office of Foreign Missions, the delegated representative of the Secretary of State, determined that favorable action on the present application would fulfill the international obligation of the United States

to facilitate the acquisition of adequate and secure premises by the Government of the Republic of Kazakhstan for its diplomatic mission in Washington.

2. **Historic Preservation.** The 3-story plus basement masonry building is located in the Dupont Circle Historic District, but is not a historic landmark. The historic character of the building is an asset to both the neighborhood and to the Embassy and will be maintained as such. The Embassy will install a flagpole in front of the building, plus two plaques identifying the chancery on the exterior of the building. The Embassy will also install landscaping in and around the accessory parking area.

The Embassy will surround the parking area with a 7-foot metal security fence. The security fence will extend to the rear of the adjacent house at 1529 O Street, which is also being acquired by the Embassy. The fence will be set back along a portion of the alley, at the request of the adjacent owner, to facilitate vehicular movement in the alley. The northernmost section of fence along the 16th Street frontage of the property will be repaired and repainted and aligned with the remainder of the fence along 16th Street to better integrate it with the adjacent low ornamental fence. The low ornamental fence along 16th Street turns the corner on O Street and attaches to the building just east of the turret on the corner. That low ornamental fence does not connect with the taller fence at the O Street entrance to the parking area. The additional low fence to be relocated along the O Street frontage will also terminate at the building, and will not connect with the taller fence. The existing metal ornamental fences along the O Street frontage will be relocated elsewhere on the property. The mechanical equipment and trash receptacles will be screened by wood fencing

The parking area will be repaved, and wheel stops will be installed. The existing lighting of the parking area will be replaced with lower light fixtures oriented downward onto the surface of the parking area.

By memoranda submitted March 26 and 30, 1998, the Chief of the Historic Preservation Division reported that the Historic Preservation Review Board (HPRB) recommended approval of the Embassy's proposed alterations as well as the proposed landscaping, screening and fencing. The HPRB was of the view that the proposal would be compatible with the character of the historic district. The Board concurs with this recommendation. Accordingly, there will be no adverse impact on the historic preservation objectives of the District of Columbia.

3. **Parking and Transportation.** The building was constructed prior to 1958. Under Chapter 21 of the Zoning Regulations, the parking requirement for chanceries in the SP District is one space for each 1,800 square feet of gross floor area with a credit for the first 2,000 square feet. However, the building is exempt from that requirement as a contributing building in a historic district under Section 2100.5 of the Zoning Regulations.

There are 15 automobiles associated with the current operation of the chancery, and this will continue at the new site. Given the excellent supply of public transportation within walking distance of the site, Embassy personnel who do not either come by car, or walk to the site, will be able to utilize public transportation to travel to and from work. There are up to 32 parking spaces on site. This is sufficient to accommodate any future demand for more parking spaces, if this becomes necessary.

The property is split-zoned DCOD/SP-1 and DCOD/R-5-B. The R-5-B portion of the parking area which is under consideration in this application has been used for parking since the late 1950s. The Embassy proposes to continue that use, and to secure the perimeter of the parking area with a metal fence of an appropriate design. As described above, the Embassy will also undertake extensive additional improvements on the property. The chancery use of the building is permitted as a matter-of-right. The property is surrounded by other compatible uses, including other chancery uses, nonprofit and other SP uses, church, hotel, institutional and residential uses.

The Board finds that continuation of the R-5-B portion of the parking area as accessory parking for the chancery is appropriate under Section 214 of the Zoning Regulations as follows:

1. **Section 214.2:** The accessory parking spaces are in an open area of Lot 847.
2. **Section 214.3:** The accessory parking spaces are located in their entirety within 200 feet of the new chancery building.
3. **Section 214.4:** The accessory parking spaces are contiguous to the new chancery building.
4. **Section 214.5:** Compliance with Section 2303:
  - a. **Section 2303.1(a):** All areas devoted to driveways, access lanes and parking areas are paved. The paving is in a state of disrepair, and the parking area will be repaved to form an all-weather impervious surface.
  - b. **Section 2303.1(b):** No vehicle or any part of a vehicle will project over any lot line or building line.
  - c. **Section 2303.1(c):** No use other than chancery use will be conducted from or upon the premises, and no structure other than an attendant's shelter will be erected or used upon the parking lot.

- d. Section 2303.1(d): The vehicular entrance and exit to the parking area is more than 40 feet from the intersection of 16<sup>th</sup> and O Streets, N.W.
  - e. **Section 2303.1(e):** The existing lighting used to illuminate the parking lot will be removed, and new lighting of less intensity will be installed and arranged so that all direct rays of the lighting are confined to the surface of the lot.
  - f. **Section 2303.1(f):** The parking lot will be kept free of refuse and debris. The landscaping to be installed as conditioned herein will be maintained.
  - g. **Sections 2303.2, 2303.3 and 2303.4:** The portion of the parking lot under consideration is located in the R-5-B zone. Therefore, these provisions do not apply.
  - h. **Section 2303.5:** The installation of the fence, the landscaping and the various other improvements described above will enhance the appearance of the parking area over its present condition, and will not detract from the value of adjacent property.
5. **Section 214.6:** This subsection only applies when the accessory parking is not located either within the building or on the same lot as the main use. The parking lot in this application is not located within the building, but is located on the same lot on which the building is located. Therefore, Section 214.6 does not apply.
6. **Section 214.7:** The accessory parking spaces are so located and designed that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions. The R-5-B portion of the lot has been used for accessory parking since the late 1950's. The lot will be secured in order to prevent unauthorized parking by those not associated with the chancery. The perimeter fencing will provide security and will be of an appropriate design for the historic district. The additional improvements to the parking area as described herein will enhance the appearance of the property. The use of the parking area by the Embassy as described herein is not likely to become objectionable to adjoining or nearby property.
7. **Section 214.8:** The application has been submitted to the D.C. Department of Public Works.

The parking spaces needed for the chancery use will be located in the DCOD/SP-1 District. The balance of the parking spaces will be in the residential portion of the parking lot.

The subject site is well served by public transportation. The site is located along 16<sup>th</sup> Street, just north of Scott Circle, and three blocks east of Dupont Circle. The Dupont Circle Metrorail Station is located a short distance away. There are numerous bus lines traveling in both directions along Massachusetts Avenue, to and from Dupont Circle. There are also bus lines traveling north and south along 16<sup>th</sup> Street. Taxis are typically also available on a regular basis along 16<sup>th</sup> Street and Massachusetts Avenue, given the number of hotels, office and institutional uses in the area.

Visitations to the chancery are low in nature. There are on average five to eight per day for diplomatic and business purposes. At present, these visitors come mostly by taxicab, and that mode of travel is expected to continue at the new location. There are also five to eight visits per day to the Consular Section, and most of these visits are by messengers on bicycles.

The Board finds that, given the low density of the proposed use as compared to the present use, it is reasonable to conclude that any other use of this property would involve at least as many, if not more, vehicles. The Board also finds that the proposed chancery use will not create an objectionable impact on traffic and parking in the neighborhood due to the small number of personnel who drive to work, the large amount of public transportation, and the low number of visitors to the chancery.

By letter dated March 3, 1998, the Deputy Director of the Office of Foreign Missions of the U.S. Department of State, on behalf of the Secretary of State, has determined that this application meets the requirements of 22 U.S.C. Section 4306(d)(3), in that there are no special security requirements relating to parking requirements for the proposed use by the Embassy of the Republic of Kazakhstan.

4. **Protection.** The Office of Foreign Missions, in its letter dated March 3, 1998, determined that pursuant to 22 U.S.C. Section 4306(d)(4), the site and the area are capable of being adequately protected.
5. **Municipal Interest.** The Director of the Office of Planning (OP) for the District of Columbia, the delegated representative of the Mayor, by Memorandum dated March 12, 1998, determined that the Applicant has met the burden of proof under Sections 1001 and 1002 of the Zoning Regulations relative to the location of the proposed chancery accessory parking in a DCOD/R-5-B zone district. OP is of the opinion that the proposed use is compatible with other existing uses in the general area, and recommends approval of the application, provided that the issues of landscaping, lighting and fencing are addressed. In testimony at the



public hearing, the OP representative stated that the issues of landscaping, lighting and fencing should also be addressed.

Two witnesses who testified at the hearing were primarily supportive of the application, provided that the applicant addresses the issues of lighting and screening of the parking lot and trash dumpster. The applicant submitted a fencing, landscaping, lighting and paving plan to address the issues raised by the Office of Planning and the witnesses in support.

Two individuals testified in opposition to the application. Their concerns related generally to their dissatisfaction with the current non-residential nature of the SP District. However, they did not address the specific issues of this application.

The Board finds that the proposed use is in an area predominated by a mix of diplomatic, office, church, hotel, institutional and residential uses, and that the proposed use will be compatible with other uses in the historic district and in the area.

6. **Federal interest:** By letter dated March 3, 1998, from the Deputy Director, and by testimony of the Legal Counsel, the Office of Foreign Missions has determined that the location of the chancery accessory parking for the Republic of Kazakhstan at 1401 16<sup>th</sup> Street, N.W. is consistent with the federal interest.

#### **ADVISORY NEIGHBORHOOD COMMISSION**

The subject site is located within the boundaries of Advisory Neighborhood Commission (ANC) 2B. By letter dated March 12, 1998, ANC 2B unanimously supported the concept of chancery and accessory parking by the Embassy on this property, and reserved judgment on any design plans for security screening and landscaping until such plans are submitted. The Single Member District Commissioner also appeared and testified about the desire to have landscaping along the O Street frontage to screen the parking area. The Board believes that the above-referenced fencing, landscaping, lighting and repaving plan submitted by the applicant addresses these issues.

The Board concludes that it has accorded "great weight" to the issues and concerns of the ANC.

#### **DECISION**

On the basis of the record before it, the Board determines that this application satisfies the criteria set forth in Section 1001 of Chapter 10 of the Zoning Regulations and Section 206 of the Foreign Missions Act. Accordingly, it is hereby **ORDERED** that this application **NOT be DISAPPROVED, SUBJECT** to the **CONDITION** that Number 7 of the applicant's Fencing, Landscaping, Lighting and Repaving Plan (Exhibit No. 36) shall state that a total of five parking

spaces shall be taken for the creation of three gardens. One parking space shall be taken from the 16th Street side and two spaces on either side of the entrance on the O Street side of the property.

**VOTE:**        **3 – 0** (John G. Parsons, Reginald Griffith and Sheila Cross Reid not to disapprove the application; Betty King not voting, not having heard the case).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Attested by:   
**SHERI M. PRUITT-WILLIAMS**  
**Interim Director**

MAY 27 1998

**Final Date of Order:** \_\_\_\_\_

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ORD16327/TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPLICATION NO. 16327**

MAY 27 1998 As Interim Director of the Board of Zoning Adjustment, I hereby certify and attest that on \_\_\_\_\_ a copy of the order entered on that date in this matter was mailed first class postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

Christopher Collins, Esquire  
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Attested By:

A handwritten signature in cursive script, reading "Sheri M. Pruitt-Williams", written over a horizontal line.

**SHERI PRUITT-WILLIAMS**  
**Interim Director**

MAY 27 1998

**DATE:** \_\_\_\_\_